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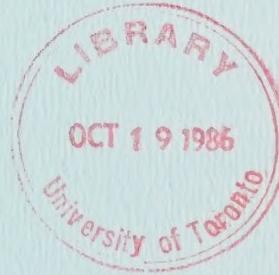


ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 145

DATE: Tuesday, October 10th, 1989

BEFORE: M.I. Jeffery, Q.C., Chairman
E. MARTEL, Member
A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, October 10th,
1989, commencing at 5:30 p.m.

VOLUME 145

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

(i)

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1 ---Upon commencing at 5:35 p.m.

2 THE CHAIRMAN: Thank you, ladies and
3 gentlemen. Please be seated.

4 MS. MURPHY: Mr. Chairman, if I could
5 just take two minutes at the outset to speak to the
6 Board on the issue of scoping for Panel 16.

7 As I am sure you are aware, we received
8 two of the statements of issues by fax late on Friday,
9 I didn't see them until today, and we received two more
10 today. My concern is, of course, I haven't had an
11 opportunity to look at them very closely and, as you
12 are aware, we have been involved in some other matters
13 today. Of more concern, I haven't had an opportunity
14 to review those documents with the witnesses for that
15 panel, and I am concerned that the scoping would be
16 more focused if I have that opportunity.

17 And I have discussed that with all
18 counsel, they understand the situation. I have advised
19 that I would be prepared to deal with the scoping of
20 Panel 16 immediately after the lunch break tomorrow,
21 which I understood would end about 1:30, and that would
22 give me the morning to discuss these new documents with
23 the witnesses that are in Panel 16.

24 And I have advised counsel and I am
25 advised that they would be available at that time.

1 MR. HANNA: Mr. Chairman, I apologize,
2 perhaps I wasn't clear with Ms. Murphy. She did
3 indicate this to me. Unfortunately, I am scheduled to
4 take the eleven o'clock flight out tomorrow. If we
5 could have it at 8:30 it would be more better for
6 myself. I have a meeting tomorrow and if we could have
7 it at 8:30 --

8 THE CHAIRMAN: Well, the Board is
9 concerned frankly over losing too much hearing time in
10 terms of the evidence. It was our understanding that
11 tonight we would deal with both the procedural matters
12 we are scheduled to deal with as well as the scoping,
13 and then proceed tomorrow morning, starting at 8:30,
14 with Ms. Swenarchuk's cross-examination.

15 To start breaking it up again in terms of
16 the scoping, just in our view, takes more time away
17 from hearing the evidence of this case and that, of
18 course, is one of the things that concerns us greatly.

19 We anticipated not going into
20 cross-examination tonight after both the procedural
21 issues and the scoping to allow Ms. Swenarchuk an
22 opportunity to prepare fully for cross-examination all
23 day tomorrow. And although we would like to
24 accommodate all of the parties, we feel that perhaps to
25 the extent that we can get through the scoping tonight,

1 we would rather do it tonight.

2 MS. MURPHY: Well then, fine. Just for
3 the record, I received from OFAH and NAN their
4 statements on Friday evening, I saw them today for the
5 first time, and I received from NOTOA this morning and
6 from Treaty 3 about 15 minutes ago. And I am also
7 advised by Ms. Swenarchuk that she was prepared to go
8 tonight.

9 THE CHAIRMAN: Well, we have reviewed
10 those statements ourselves and we don't believe there
11 is a lot in those statements that are necessarily going
12 to affect our comments on the scoping session in any
13 event. So I think we would rather proceed.

14 What we are proposing to do tonight is to
15 deal with the procedural matter concerning the length
16 of the hearing first, then take a break, during which
17 time, after listening to your submissions, we will
18 consider them briefly and if we are in a position to
19 come back with something at that point we will; if not,
20 we will then proceed to the scoping immediately
21 thereafter and then break for the evening, and
22 commencing with Ms. Swenarchuk's cross-examination
23 first thing tomorrow morning at 8:30.

24 So I think that is the way the Board
25 wants to proceed in this matter.

1 Just before we commence with hearing your
2 submissions, the Board wants to welcome our guests from
3 Manitoba who I understand are in here for some other
4 purpose and wanted to see something of how the timber
5 management hearings were going. Unfortunately, you
6 didn't pick a very good night--

7 MR. CAMPBELL: They picked a great night.

8 THE CHAIRMAN: --in the sense that we are
9 going to be dealing mainly with procedural issues and
10 we won't be dealing essentially with any of the
11 evidence tonight. However, you are welcome to see how
12 the Board is faced with procedural challenges from time
13 to time and you will get some measure of our patience
14 or impatience as a result of tonight's proceedings.

15 Okay. Who is up first. Mr. Campbell,
16 are you the designated--

17 MR. CAMPBELL: Hitter.

18 THE CHAIRMAN: --hitter tonight?

19 MR. KENNEDY: Mr. Chairman, might I ask a
20 question. Is it appropriate for the panel to step
21 down?

22 THE CHAIRMAN: Yes. I don't think we
23 will be requiring the panel tonight, so you can all
24 step down.

25 ---(Panel withdraws)

1 MR. CAMPBELL: Mr. Chairman, just before
2 reporting on the results of the meeting of counsel,
3 which you asked to have brought to the Board's
4 attention at this time, there are a few preliminary
5 matters I would like to deal with.

6 First of all, on behalf of all parties
7 and those who have attended the hearing, we extend our
8 condolences to Mrs. Koven and we would like to assure
9 you that you have all of our support.

10 The second matter I would like to deal
11 with is the Class EA for Access Roads to Ministry of
12 Natural Resources Facilities. I have provided the
13 Board, parties, witnesses, reporter with copies of that
14 document. They are on the desk before you, one for
15 each member of the panel and a record copy.

16 I don't know whether you intend to mark
17 that as an exhibit or whether to mark it during the
18 course of the cross-examination, but I wanted to advise
19 you that we had that available.

20 THE CHAIRMAN: I think we can give it an
21 exhibit number now. Exhibit 889, I believe.

22 MS. SWENARCHUK: Mr. Chairman, I believe
23 it is already marked as Exhibit 886.

24 THE CHAIRMAN: Oh, okay.

25 MR. CAMPBELL: Mr. Chairman, I should

1 also advise that we have, for the convenience of
2 everyone, bound in the front of the document the formal
3 approval of the Minister giving approval to proceed
4 with the undertaking; that is, of course, in respect of
5 this Class Environmental Assessment for Access Roads to
6 MNR Facilities, and behind that the conditions of
7 approval which were incorporated into that document.

8 THE CHAIRMAN: Very well. That will be
9 Exhibit 886.

10 ---EXHIBIT NO. 886: Copy of Class Environmental
11 Assessment for Access Roads to MNR
12 Facilities containing formal
approval of the Minister and
conditions of approval.

13 MR. CAMPBELL: Now, the third preliminary
14 matter, Mr. Chairman, you asked if I would obtain
15 appropriate instructions and advise the Board of MOE's
16 position with respect to membership on timber
17 management planning teams.

18 THE CHAIRMAN: Yes.

19 MR. CAMPBELL: The position of the
20 Ministry of the Environment is that it would be
21 beneficial if MOE could from time to time at MOE's
22 discretion appoint a member to be part of a timber
23 management planning team from start to finish of the
24 planning team's work.

25 MOE would not seek any compulsory order

1 from the Board requiring membership from MOE on all
2 such teams and, as stated by Mr. Kennedy, that is very
3 much for resource reasons.

4 THE CHAIRMAN: Thank you.

5 MR. CAMPBELL: Now, perhaps to introduce
6 the report on the discussions that have been held
7 between counsel with respect to responding to the
8 Board's discussions on the length of the hearing, I
9 think perhaps the easiest way to proceed is to
10 distribute to you a proposal which I placed in front of
11 counsel at the meeting today.

12 I have instructions to consent to the
13 provisions of this proposal on behalf of the Ministry
14 of the Environment, for reasons that must be obvious.
15 It having been presented today only for the first time,
16 none of the other counsel are in that position, and I
17 will speak to that matter briefly, but I think that the
18 document will provide some focus for the remarks which
19 I wish to make and perhaps I distribute it at this
20 time. (handed)

21 THE CHAIRMAN: Mr. Campbell, how do you
22 wish to proceed in this matter, in the sense that
23 although matters of this type won't necessarily be
24 exhibited to the proceedings and certainly isn't part
25 of the evidence, the Board nevertheless feels that this

1 discussion may be of interest to others who are not
2 present on an ongoing basis at the hearing and it might
3 be preferable to somehow, in addition to the verbal
4 discussion being on the record, to have a document like
5 this also exhibited in the transcripts.

6 MR. CAMPBELL: Well, I was going to
7 suggest that perhaps the easiest way is simply to
8 incorporate it into the transcript either directly at
9 this point in the transcript or append it behind the
10 final page of today's transcript.

11 I am indifferent except I would like the
12 opportunity to provide the reporter with a copy which
13 has my typo corrected other than by my handwriting.

14 THE CHAIRMAN: Okay. Why don't we do
15 that, reporter. We will have this referred to as being
16 presented to the Board and the text of this document is
17 outlined. I don't think we will necessarily give it an
18 exhibit number, and everyone else will have the benefit
19 of it as well.

20 ---(Written submission appended)

21 MR. CAMPBELL: Mr. Chairman, just in
22 opening I think I would like to express what I believe
23 is a view shared by many of the counsel which is that
24 this matter is one of considerable importance and
25 considerable importance to the proponent. It is not an

1 uncomplicated matter, and all of the parties before
2 you, with very few exceptions, represent large
3 constituencies and bring before you, in a very real
4 way, a consolidated set of interests which have to be
5 represented.

6 I think that is to say that speeding up
7 the process is not something which the Board should
8 pursue at all costs, and I don't suggest for a moment
9 that that is what you intend to do in these
10 proceedings, but I think it is worth noting that
11 sometimes on important, complex matters, yes, they do
12 seem to take some time and that that is not necessarily
13 a wrong thing, it may simply be something that is
14 encumbent in the nature of the examination before you.

15 THE CHAIRMAN: Okay. Without agreeing or
16 disagreeing with you, Mr. Campbell, let's go on to what
17 the substantive part of the proposal is.

18 Take it as a given that this Board will
19 do nothing other than conduct this proceeding in a
20 manner which this Board believes is both in the public
21 interest and will afford the Board an opportunity to
22 end up with a reasoned decision on all of the evidence
23 put forward by all of the parties in a manner which is
24 consistent with procedural fairness and, consequently,
25 we understand the parties' concerns, that the Board

1 does not sacrifice any type of fairness or enter upon a
2 situation for expediency purposes only so that it will
3 not have before it all of the evidence that is
4 necessary for it to reach an informed decision on the
5 merits of this case.

6 You can put it in a number of different
7 ways, but take it as a given that the Board is well
8 aware of the parties' concerns in this regard and would
9 not jeopardize this hearing for expediency only.

10 MR. CAMPBELL: You said it much better
11 than I did, Mr. Chairman.

12 THE CHAIRMAN: So now let's sort of, if
13 we can, move on to what the proposal is.

14 MR. CAMPBELL: Dealing with the specific
15 proposal that was brought to the meeting today -
16 amongst some other suggestions which I will get to -
17 there are really two areas that are addressed by this
18 proposal: One has to do with calling evidence in
19 cross-examination, the other has to do with how to
20 focus peoples' attention, including parties' attention,
21 on the end of the process as opposed to on interim
22 procedures.

23 The first three paragraphs of the proposal
24 are aimed at reinforcing the Board's wish to have the
25 procedural aspects of the hearing focused and proceed

1 in a timely way. The proposal is to have parties adopt
2 a voluntary limit of one and a half days per panel for
3 direct evidence with leave of the Board being required
4 if more time is felt to be required.

5 There was some suggestion at the meeting
6 that the Board should make it clear that it would not
7 be, or perhaps to put it a different way, it would be
8 liberal in granting such leave in appropriate
9 circumstances. The kinds of circumstances which were
10 discussed were situations where translation was
11 required which necessarily would extend time; other
12 situations where, on the merits of the case going in,
13 it was apparent that there was good reason to extend
14 this time.

15 Secondly, and really paragraphs (b) and
16 (c) deal with reinforcement of the scoping procedure
17 and suggest that any party not filing a scoping
18 statement in a timely manner would require leave of the
19 Board before being permitted to cross-examine on that
20 panel. Leave considerations, however, would depend on
21 the party specifically identifying relevant matters
22 which it intends to raise in cross-examination.

23 There is a strong view amongst counsel
24 that what matters for cross-examination purposes is
25 relevance, subject of course not to being unduly

1 repetitious in the course of that cross-examination.
2 To give that a little more shape, it is suggested that
3 scoping sessions should be scheduled three weeks in
4 advance of the expected commencement of the panel's
5 evidence and any party not filing material - that is
6 for that scoping session - should be notified by the
7 Board that if they still wish to cross-examine they
8 must within one week of the date of the scoping session
9 make representations to the Board in support of leave
10 and that failure to make representations would be
11 understood by the Board as waiver of the opportunity to
12 cross-examine the panel.

13 THE CHAIRMAN: Okay, just to expand on
14 that one. If a party does not file any material, a
15 statement of issues with respect to a scoping session
16 but does indicate within a week of the actual
17 cross-examination that they wish to cross-examine, on
18 what can they cross-examine; the whole witness
19 statement, or is there a special scoping session
20 dealing with that party alone?

21 MR. CAMPBELL: I think they would have --
22 it would be incumbent upon them to identify the areas
23 on which they wish to cross-examine as part of their
24 representations in making leave for permission to do
25 so, having missed the scoping sessions. It should not

1 be an open-ended situation in my submission.

2 THE CHAIRMAN: And are you suggesting
3 that missing the scoping session should only be as a
4 result of extraneous circumstances beyond one party's
5 control type thing? In other words, what are the
6 grounds for the Board giving leave to cross-examine at
7 all in those circumstances?

8 MR. CAMPBELL: I think the principal
9 reason -- again our focus has been on relevance. I
10 think that parties who miss scoping sessions should be
11 required to offer an explanation as to why that is the
12 case, and I am reluctant to say that there would be
13 reasons that would result in the Board simply denying
14 the opportunity to cross-examine because the reasons
15 offered were so insubstantial. I don't think in the
16 face of good reasons it would be wise to deny
17 cross-examination. The point is to try and ensure as
18 best one can that --

19 THE CHAIRMAN: How could we deny the
20 right to cross-examine in any event, in view of the
21 Statutory Powers Procedure Act?

22 MR. CAMPBELL: I think if you look at the
23 cases under that Act, Mr. Chairman, that there have
24 been cases in which rights to cross-examination have
25 been abridged. This wording is aimed at setting up

1 procedural rules to make it clear that a complete
2 failure to make representations in accordance with the
3 Board's requirements would be a waiver of that right.

4 In my submission the Board has the power
5 to set appropriate procedures. It cannot accomplish
6 its objectives on scoping if parties do not come
7 forward and cooperate and, in my submission, this rule
8 would be supportive.

9 THE CHAIRMAN: Okay. Mr. Edwards?

10 MR. EDWARDS: Mr. Chairman, I hesitate to
11 interrupt Mr. Campbell, but my reading of sub (c) and
12 what I understood that we had considered at the meeting
13 was the issue of filing material rather than attendance
14 at the scoping session, there is two separate items,
15 and the Board seems to have moved to the second one
16 which really isn't part of the material; that is to
17 say, if somebody doesn't file material they may lose
18 the right to cross-examine.

19 But it would be my reading of this that
20 they would allow a person who filed a statement of
21 issues and was unable for whatever reason to attend the
22 scoping session to still cross-examine without having
23 to make further representations to the Board.

24 And I would just invite Mr. Campbell to
25 clarify whether that is his reading as well.

1 MR. CAMPBELL: Yes. I was answering your
2 question, Mr. Chairman, on the assumption that not only
3 was there non-attendance, there was non-filing.

4 THE CHAIRMAN: No, I think the Board was
5 really addressing its mind to whether or not parties
6 had taken part in the scoping session by not filing the
7 statement of issues.

8 Certainly if they file their position in
9 a statement of issues and don't attend the actual
10 scoping session their further concerns may not be taken
11 into account beyond what is stated in the statement of
12 issues itself, but the Board can render its decision on
13 the issues to be dealt with in examination based on the
14 written material.

15 So I would agree with you that I think
16 the important thing is that parties file the statement
17 of issues and you are also expected to attend, but it
18 may be for some reason that parties cannot attend.

19 MR. CAMPBELL: All of these provisions of
20 course, Mr. Chairman, are aimed at emphasizing again
21 and regularly the importance the Board places on the
22 scoping sessions and the objectives which it has
23 established for those sessions.

24 THE CHAIRMAN: Okay. But let's go back
25 to that for a minute because this is an area that the

1 Board is not entirely happy with the results of the
2 scoping sessions to date and; that is, we have the
3 proponent's statement of issue which is contained
4 generally in their synopsis or executive summary of the
5 witness statement, and then we have the parties looking
6 at those areas and indicating in a statement of issue
7 filed by each party upon which areas they intend to
8 cross-examine.

9 Now if you take, for example - and we
10 will get to it later tonight - Panel 16, there are
11 maybe five paragraphs out of the proponent's statement
12 of issues upon which parties don't intend to
13 cross-examine and some of those paragraphs deal with the
14 signature pages--

15 MR. MARTEL: That is all that's there.

16 THE CHAIRMAN: --of the witness
17 statements.

18 MR. MARTEL: Every other paragraph.

19 THE CHAIRMAN: And so where we are is
20 cutting down absolutely nothing in terms of fastening
21 upon areas of which parties, for one reason or another,
22 feel are important to their interest and sort of using
23 a broad brush approach and saying, effectively, we are
24 going to deal with everything.

25 Now, that is by allowing the parties

1 themselves to make the choice as to which issues they
2 wish to cross-examine upon. Now, you have got to
3 realize, I think, that this is a two way street; the
4 Board sits here as well, it has read the witness
5 statements, and what the parties deem to be important
6 for their clients' interests the Board may not
7 necessarily feel it's a matter that has to be
8 extensively cross-examined, and somehow the Board feels
9 that it may have to amend the procedure in the scoping
10 sessions so that if we are going to rely on scoping as
11 one of the principal mechanisms for shortening this
12 hearing, it is going to have to somehow focus and
13 eliminate some issues from at least oral presentation
14 either by cross-examination or otherwise, direct, and
15 it doesn't seem to be doing that. That is all the
16 Board is saying.

17 It's looking back and although it is
18 focusing everybody's mind on what the witness statement
19 contains and what areas some of the parties are
20 interested in, by and large very few of the parties are
21 giving up anything in terms of what they do not find
22 necessary to cross-examine upon. And, you know, we are
23 not sure, quite frankly, of the full value of these
24 scoping sessions as a mechanism for shortening
25 anything.

1 MR. CAMPBELL: If the Board has
2 suggestions to increase the focus of those sessions and
3 to increase the focus of the statements to improve what
4 it sees as the content of those statements...

5 THE CHAIRMAN: Well, without sort of
6 pre-empting what you have got for the rest of your
7 proposal, we sort of feel at least when we get to the
8 other side of the case, if not for the remaining panels
9 of the proponent - but it may not be possible to do
10 with the remaining panels of the proponent's evidence
11 because the parties haven't yet filed their own
12 proposed conditions of approval - but when we get to
13 the position where the proposed conditions of approval
14 from all the parties are on the table, then maybe the
15 scoping sessions related to the witness panels of those
16 in opposition or those other parties, like the industry
17 in support, can somehow be tied in to their conditions
18 of approval that they would want to see in any ultimate
19 decision as contrasted to the conditions of approval
20 put forward by the proponent.

21 And there is where we may be able to
22 focus on what areas are going to be the subject of
23 cross-examination; i.e., tying them into specifically
24 what the parties want at the end of the case.

25 MR. CAMPBELL: That would be an

1 initiative that certainly speaking for my client we
2 would entirely support. It brings the focus to the end
3 of the case.

4 THE CHAIRMAN: Right.

5 MR. CAMPBELL: Which is where, in our
6 submission, it appropriately ought to be.

7 THE CHAIRMAN: So that is something --
8 you know, just looking at paragraph (c) we are not
9 entirely satisfied with the way scoping has gone to
10 date and for the reasons given.

11 MR. CAMPBELL: That is fine. And if the
12 Board can provide us with its views as to how to make
13 those more effective, such as requiring also a tie to
14 proposed terms and conditions, I am sure that will be
15 helpful.

16 THE CHAIRMAN: Okay.

17 MR. CAMPBELL: You will recognize that
18 these provisions did not speak so much to the content
19 of the scoping sessions but just some of the
20 enforcement mechanisms to ensure that whatever content
21 was there, it was being achieved.

22 THE CHAIRMAN: Right. And the parties
23 have to take part and assist in this whole process or
24 ultimately they may lose some rights by way of waiver.

25 MR. CAMPBELL: All right. Now, moving

1 on, I think the balance of the proposal really speaks
2 quite directly to a matter which you raised, Mr.
3 Chairman, which was terms and conditions.

4 We suggest there that we name a date by
5 which each party would file proposed terms and
6 conditions setting out the specific order which that
7 party wishes the Board to make at the conclusion of the
8 hearing. We suggest a date of January 30th.

9 Based on discussions of this afternoon,
10 as the Board is aware, that may or may not be the end
11 of MNR's evidence, given that Dean Baskerville is
12 expected in December, and so we thought it was best to
13 name a date certain as opposed to leave it floating at
14 this time.

15 THE CHAIRMAN: And you will have before
16 you for some time Panel 16 which is the only other real
17 substantive panel dealing with monitoring in terms of
18 the proponent's position, so that presumably parties in
19 opposition could formulate their conditions of approval
20 knowing what the proponent's case was, even though it
21 may not have been fully presented.

22 MR. CAMPBELL: That is certainly what
23 that date recognizes.

24 THE CHAIRMAN: Okay.

25 MR. CAMPBELL: What we then propose is

1 the following: That the parties, all of the parties
2 who have filed proposed terms and conditions would make
3 available during the period - and the period that we
4 have suggested is January 30th to March 9th - they
5 would make available named persons for the purpose of
6 negotiating agreements with respect to proposed terms
7 and conditions.

8 Now, the idea here is to have focused
9 discussions amongst the parties and the proponent at a
10 working level, if you will; that is, right down into
11 the nitty-gritty of the terms and conditions to see
12 whether agreement can't be reached on some matters,
13 recognizing that the negotiating teams would be quite
14 busy during this period and that the results would have
15 to go back for instructions. I've continued to say
16 that it would be understood that any agreements reached
17 in the course of those negotiations would be subject to
18 management or client approval with the results of that
19 management or client consideration being finalized and
20 communicated by April 13th, 1990; that is, of course,
21 communicated to the parties involved in those
22 negotiations.

23 We would then ask that the Board set
24 aside hearing time in the week of April 30th for the
25 purpose of being advised of the outcome of any

1 discussions relating to terms and conditions and on
2 appropriate procedures for dealing with such agreements
3 in the hearing.

4 I guess there are two problems here,
5 before I get back to the general concept here in terms
6 of appropriate procedures for dealing with such
7 agreements. There have been instances where other
8 panels have shown more or less enthusiasm for parties
9 bringing forward such agreements for Board
10 consideration. Some panels have used that as a device
11 to save time; other panels have taken the position that
12 they need to hear a good portion of the evidence in any
13 event.

14 It is necessary, of course, in all cases
15 that agreements be supportable on the evidence and
16 there will have to be - assuming that some agreements
17 are reached - there will have to be some procedure so
18 that other people who are not party to those
19 discussions have some opportunity to deal with those
20 areas.

21 I don't put before you today any
22 particular solutions though to those questions, but
23 it's important to recognize them and I think a solution
24 would have to be fashioned to meet the particular
25 circumstances that came before the Board.

1 MR. MARTEL: Well, if we got an
2 agreement, Mr. Campbell, you are suggesting at the end,
3 if you got an agreement, that that would terminate the
4 hearing?

5 MR. CAMPBELL: If you got --

6 MR. MARTEL: I mean, if you got consensus
7 on all the points that you could reach an agreement,
8 are you saying at that point that we could --

9 MR. CAMPBELL: Well, I think there still
10 may be a few people around the province that you would
11 need to hear from. The parties before you today, for
12 instance, do not have the authority to speak for all of
13 the people of the province on all matters, and it's
14 just that kind of concern that has led to the closing
15 words of that paragraph.

16 Nevertheless - and I will jump ahead a
17 little bit - it certainly is my submission that if the
18 Board is concerned about shortening this hearing, there
19 are really in the end only two ways to do it: One is
20 to get agreement on some issues and get them off the
21 table so they don't occupy any more hearing time or at
22 least any substantive hearing time.

23 THE CHAIRMAN: Well, that hopefully was
24 our aim initially with some of the scoping sessions
25 and; that is, basically: Here's the evidence, here's

1 the various interests of the parties as recognized by
2 themselves, if you can reach accommodation based on
3 what you have seen - and we have never prevented any of
4 the parties from speaking with each other or consulting
5 amongst yourselves - get the issue off the table. The
6 problem being, you know, is that not very many issues
7 have been removed voluntarily from the table.

8 MR. CAMPBELL: Well, obviously it would
9 be inappropriate for me to speak to the efforts that
10 have been made along those lines, but those remarks
11 previously have not gone unnoticed by counsel.

12 In any event --

13 MR. MARTEL: All right. But could I ask
14 a question then? Could I ask a question at this stage
15 then, Mr. Campbell?

16 You are suggesting that, let's say, each
17 party - and this is hypothetical - had a certain number
18 of issues and there was consensus or agreement reached,
19 that all of those items would then come directly off
20 the table and we wouldn't have any more evidence from
21 any of the parties with respect to those specific
22 issues?

23 MR. CAMPBELL: You wouldn't need any more
24 evidence from those parties who supported the
25 resolution put forward in that agreement. I think

1 there is a concern, the Board has local hearings
2 scheduled all over the province, those people should be
3 made aware that there is a proposal before the Board
4 and they should be entitled to comment on it, call
5 evidence on it, et cetera, et cetera, or some other
6 people with rights who are not caught up in this
7 proposal and their rights have to be protected, and
8 that is what this is aimed at.

16 MR. CAMPBELL: That would certainly be my
17 position. If there was an agreed term and condition
18 which satisfied a concern that my client had, there
19 would be no reason for me to ever mention it again nor,
20 under those circumstances, it having been resolved,
21 should the Board be very happy about anybody who is
22 party to that agreement bringing it up, it is resolved.

1 MR. CAMPBELL: - Absolutely.

2 THE CHAIRMAN: That could well be in the
3 form of the witness statements itself.

4 MR. CAMPBELL: Absolutely and --

5 THE CHAIRMAN: We don't have to deal with
6 it in open session, but we have it before us, the
7 parties have agreed to it and I suppose other parties
8 that would enter the hearing's proceedings at whatever
9 stage through the public sessions in various locales
10 could address it, they wouldn't be party to this
11 agreement per se.

12 And the Board would listen to it and if
13 it was persuaded, for instance by the representations
14 of one of these other parties, it may well have to
15 advise the parties, I suppose, that it does not accept
16 the agreement and perhaps the parties may have to argue
17 that one out.

18 In fairness, if we sort of indicate it's
19 off the table to the full-time parties but our minds
20 are changed by other evidence brought in by somebody
21 not bound we would in effect, I think in fairness,
22 throw it back on the table and say: Have a go at it,
23 and then we will make up our minds in the ultimate
24 decision.

25 MR. CAMPBELL: That would certainly be

1 the fair way to deal with it. I think dealing directly
2 with Mr. Martel's question though, the concept here
3 though is: If a matter is covered by an agreed term
4 and condition then, yes, it is history for those
5 parties, it's settled, like any other settlement
6 discussions.

7 Now, that is the first way.

8 MR. MARTEL: Could I just have one moment
9 with the Chairman, please.

10 ---Discussion off the record

11 THE CHAIRMAN: What would the objections
12 of the parties be - we are just canvassing openly,
13 quite frankly, without having thought all of this
14 through a hundred per cent - what would be the view of
15 the parties with respect to the areas that were not
16 agreed upon by the parties, the full-time parties to
17 these negotiating sessions, if these were reviewed by
18 the Board with the parties with a view towards seeing
19 if there couldn't be any further accommodation before
20 we ultimately ended up with a list of defined issues
21 upon which there is absolutely no agreement and those
22 will have to be addressed in the normal fashion. I can
23 perceive some difficulties with that and --

24 MR. CAMPBELL: I think it is absolutely
25 critical that the Board not put itself in the position

1 of becoming a party to those negotiations.

2 THE CHAIRMAN: Okay.

3 MR. CAMPBELL: That is the first thing.

4 THE CHAIRMAN: Okay.

5 MR. CAMPBELL: The second thing, and that
6 is fundamental.

7 THE CHAIRMAN: Okay.

8 MR. CAMPBELL: Secondly, I think it is
9 perfectly fair for the Board, because all of these
10 areas of disagreement will be covered by the terms and
11 conditions that will be filed in front of you, there is
12 absolutely nothing wrong with the Board asking
13 questions of counsel to be sure that it is in its own
14 mind absolutely clear as to what is being requested and
15 what the area of disagreement is.

16 And I guess my experience is that
17 sometimes, if Board's ask sufficiently penetrating
18 questions along those lines, some areas of hitherto
19 unsuspected consensus begin to emerge.

20 MR. MARTEL: That can become consensus
21 eventually. I understand your concern, Mr. Campbell, I
22 just wonder the reason why we might look at it in that
23 way is not to try to interfere in the process, but as
24 you talk it out rationale becomes much more --

25 MR. CAMPBELL: Well, there is --

1 THE CHAIRMAN: I think the Board
2 understands the concern of counsel with the Board
3 playing more than one role.

4 MR. MARTEL: I understand.

5 MR. CAMPBELL: That is really subject to
6 all of that, but--

7 THE CHAIRMAN: That's right.

8 MR. CAMPBELL: --but making sure the
9 Board understands exactly the term and condition that
10 is being requested and why it's different and so on, is
11 perfectly appropriate and, in my submission, at least
12 is helpful in the Board understanding the point of
13 view, so that on matters like scoping and relevance of
14 cross-examination it has better information on which to
15 make all of those kinds of rulings.

16 THE CHAIRMAN: Okay.

17 MR. CAMPBELL: Now, as I say, I am
18 really -- because I am responsible for these, that I am
19 really the only one who has any instructions on them,
20 as you might expect. These matters were discussed at
21 the meeting held this afternoon and, on behalf of
22 counsel, I would suggest that the Board recognize that
23 counsel will undertake to obtain instructions on these
24 matters as soon as possible but, given the nature of
25 the client groups represented, we ask that we not be

1 required -- that counsel not be required to speak to
2 this any earlier than the start of the day on October
3 18th. I'm sorry, I wrote down the wrong date, it
4 should have been the 17th which is the Tuesday at the
5 start of the day.

6 The counsel at the meeting felt that they
7 could probably obtain instructions by that date and
8 would make their best efforts to do so. You will
9 understand that it's some time not just as easy as
10 making a simple phone call.

11 Meanwhile, having had an opportunity to
12 consider these proposals, it would, as always, be
13 helpful to have any initial reactions which the Board
14 might wish to express in regard to them. Now, a good
15 deal of that I think is reflected in the questions you
16 have put to us today.

17 We also considered the question of
18 whether any additional sort of interlocutory or interim
19 or intermediate procedures - I am not quite sure what
20 the right word is - would be helpful, any more
21 pleadings or other filings around issues. It is I
22 think the consensus of counsel that resources are going
23 to be stretched to do an appropriate job on terms and
24 conditions in addition to the other requirements that
25 we have to meet for scoping and other matters and

1 continuing cross-examinations, that more sort of
2 interlocutory type material could, in fact, be
3 counterproductive in that it focuses on some sort of
4 intermediate period as opposed to focusing on the end
5 of the hearing.

6 This hearing is going to end with some
7 kind of order and possibly with some kind of terms and
8 conditions and it is important, I think, to focus on
9 the end and not just to increase the burden along the
10 way. We think our terms and conditions can be used as
11 a very sharp focus on what people want from this
12 hearing.

13 THE CHAIRMAN: Okay. With that in mind,
14 Mr. Campbell, what about the suggestion that the
15 statements of issue put forward by the parties in
16 opposition or those in support, other than the
17 Ministry, also contain reference to the specific terms
18 and conditions.

19 You see, the way the Ministry put forward
20 their terms and conditions, they came forward as terms
21 and conditions unrelated to their executive summaries
22 which preceded them in terms of point of time. At this
23 point in time though everybody who is going to be
24 presenting their witness statements for their side of
25 the case, the terms and conditions -- the draft terms

1 and conditions of both themselves and all other parties
2 will, in effect, be on the table, and it would seem to
3 us to make it more beneficial if these executive
4 summaries were tied in specifically to what that party
5 wants by way of terms and conditions, so that the
6 issues that they are going to deal with in evidence are
7 related solely and essentially to the terms and
8 conditions that that party wants.

9 Now, that is one step further than what
10 you are suggesting. You are suggesting, as I
11 understand it, executive summaries in the normal course
12 with the witness statements and then a separate
13 document are terms and conditions; and we are
14 suggesting, to get a better focus, that the two be
15 combined and geared towards effectively the terms and
16 conditions.

17 MR. CAMPBELL: Well, subject to sober
18 second thoughts.

19 THE CHAIRMAN: I am not asking for reply.
20 What I am saying is, we want to throw that out.

21 MR. CAMPBELL: All right. So we should
22 be in a position to address that on the 17th?

23 THE CHAIRMAN: That's right. Now, the
24 second thing I would like to bring your attention to
25 and that is Part 3, Section 18, sub (15) of the

1 Environmental Assessment Act which is:

2 "For the purpose of proceedings before
3 the Board, the Board may appoint from
4 among a class of parties to the
5 proceedings having, in the opinion of the
6 Board, a common interest a person to
7 represent that class in the proceedings
8 but any other member of the class for
9 which such appointment was made may, with
10 the consent of the Board, take part in
11 the proceedings notwithstanding the
12 appointment."

13 And what we are suggesting, although that
14 section may not fit entirely, is where more than one
15 party has addressed a concern by a proposed condition
16 of approval and the conditions of approval deal with
17 the same issue, that perhaps from amongst the full-time
18 parties a lead counsel to deal with that issue is
19 appointed and they deal with the issue once, and any
20 other party is permitted only to add anything relating
21 to the issue which may particularly pertain to their
22 client only or their client's interest only, if that
23 interest were in fact different.

24 MR. CAMPBELL: Well, Mr. Chairman, I
25 think the focus of any such suggestion has to be not on

1 the nature of the issue but on the term or condition
2 that is requested in respect of that issue; that is, on
3 any particular issue three different parties may wish
4 to put before the Board three radically different
5 solutions to dealing with that issue and their
6 cross-examinations and arguments and so on would focus
7 on quite different things.

8 If the Board saw that three different
9 parties in their terms and conditions were asking for
10 something that was virtually identical then, in my
11 submission, it's not necessary for the Board to do what
12 might be construed, with respect, as a little bit of a
13 stretch of this section. It has full powers to prevent
14 repetitive cross-examination or unduly, lengthy or
15 inappropriate cross-examination and there is no reason
16 for the three counsel to go over the same -- be allowed
17 to go over the same ground asking the same sorts of
18 questions. You have those powers already.

19 THE CHAIRMAN: Well, we do, but there has
20 been, you know, four or five issues in this hearing
21 which have cropped up from time to time which have been
22 addressed to some extent by several of the parties;
23 traceability strikes us as one, quantification strikes
24 us as another, and there is these types of issues that
25 each party more or less wishes to address and they have

1 addressed them in the course of this hearing to date
2 with relevance to more than one panel.

3 And all we are saying is, is that when
4 all the conditions of approval are on the table - some
5 of which we assume will address those issues - from the
6 various parties, that perhaps it would be appropriate
7 if the Board heard those types of generic issues once
8 and then where a specific interest might be involved
9 that is slightly different from other interests, it
10 might require some embellishment.

11 I mean, it's sort of an 'as you go' call.
12 I am not sure you can put a rule into place that will
13 cover every case up front. But that is the type of
14 thing that the Board, if it were to come down and say:
15 We have heard about traceability, don't deal with it
16 any further, granted we may have the power, but I would
17 suggest that the parties or some parties would be upset
18 if they weren't allowed, in their own case, to pursue
19 that individually.

20 MR. CAMPBELL: No, but I guess my
21 suggestion to you, Mr. Chairman, is that I think, yes,
22 they would be upset, assuming that their objective in
23 pursuing that line of cross-examination was different
24 from something that had already been established by a
25 previous cross-examiner; if the objective is exactly

1 the same, I don't see where you need any additional
2 powers.

3 If the objective is different for that
4 party as opposed to the previous party, then I think it
5 is appropriate to let them pursue that different
6 objective.

7 THE CHAIRMAN: Well, the objective say
8 with the issue of traceability, I would suggest, is
9 probably the same for all parties and; that is, to
10 allow the public to ascertain from the documentation
11 how decisions are made and trace them back through.

12 MR. CAMPBELL: But in the end, Mr.
13 Chairman, you are going to have to make some orders as
14 to how that is achieved and there may be wildly
15 different views as to how that is achieved. That is
16 what I mean in terms of objective. Everybody loves
17 traceability. There will be wildly different views as
18 to (a) what constitutes it and (b) how best to achieve
19 it.

20 THE CHAIRMAN: Okay. Well, we throw out
21 as another suggestion the idea, if we are dealing with
22 similar issues and similar conditions, that perhaps it
23 doesn't have to be addressed individually by a number
24 of counsel and perhaps there can be a lead counsel with
25 respect to the treatment of that particular issue or

1 condition and we leave it at that.

2 MR. CAMPBELL: All right. Well, perhaps
3 we should add again -- add to that list of things that
4 we will come back and everybody will be in a position
5 to address you on next Tuesday.

6 THE CHAIRMAN: All right. Okay.

7 MR. CAMPBELL: I should also report to
8 you that there were a few other measures discussed.
9 The principal one that I perhaps should mention to you
10 was appropriate arrangements for limitations on oral
11 argument, and all counsel are prepared to entertain
12 some thoughts along those lines, but given the state of
13 play at the moment, we think the details of that
14 question can be put off until later. There are some
15 opportunities for saving time there, it isn't necessary
16 at least --

17 THE CHAIRMAN: I take it you are also
18 considering the possibility of written argument?

19 MR. CAMPBELL: Yes.

20 THE CHAIRMAN: All right.

21 MR. MARTEL: What about limiting yourself
22 to cross-examination time?

23 MR. CAMPBELL: Mr. Martel, I think the
24 view is generally that counsel do have specific matters
25 in mind when they cross-examine. We may not be very

1 good sometimes at communicating what those are to the
2 Board but I assure you that spending time
3 cross-examining is not done just for that purpose and
4 it is done for a purpose that is related to the
5 interest one is trying to represent, and we are more
6 than cognizant of the Board's concerns that its time be
7 used wisely.

8 The test for cross-examination surely
9 ought to relate more to relevance, it ought not to be
10 repetitive, and the Board has powers in that regard,
11 but it relates to relevance. There are matters that it
12 is possible to say from time to time: We don't think
13 you need to go into any more detail about that, we
14 understand the matter, we understand the points you are
15 making. That is helpful to counsel. We don't resent
16 it one bit. And we ought to be able to explain if
17 asked why we are pursuing a particular line. All of
18 those things are available to the Board right now to
19 control us in terms of time, if you feel it necessary.

20 My own view and my own submission is that
21 artificial limits or arbitrary limits on
22 cross-examination time are to be avoided except in the
23 most dire of circumstances and I don't think we are
24 there yet.

25 I think those are the matters which we

1 particularly wanted to bring to your attention. I
2 should emphasize again, other parties are not in a
3 position where they have instructions to speak to the
4 acceptability or otherwise of this proposal and I want
5 to emphasize - I have said it once, I am going to say
6 it again at the hint of wasting some time - is that, in
7 our submission, the key to saving time is identifying
8 the differences clearly so they can be focused on, and
9 the terms and conditions will do that; and, secondly,
10 having areas of general agreement settled and taken off
11 the table. Those two things, in our submission, are
12 the two things that will save you time above all else.

13 I think those are all of my remarks, Mr.
14 Chairman, subject to any questions you may have.

15 THE CHAIRMAN: Okay. The Board thinks it
16 would be of some value to read into the record -- Ms.
17 Swenarchuk?

18 MS. SWENARCHUK: There are other counsel
19 here with other proposals to add. What you have heard
20 to date is the Ministry of the Environment's counsel.

21 THE CHAIRMAN: Okay. Perhaps before the
22 Board proceeds with what it was going to do, we will
23 hear from other counsel.

24 MR. CAMPBELL: I'm sorry, I should have
25 mentioned that, Mr. Chairman. It was an oversight.

1 THE CHAIRMAN: Ms. Swenarchuk, you are
2 first off the mark. We will hear from you next.

3 MS. SWENARCHUK: I just first wanted to
4 clarify, Mr. Chairman, that what we are discussing here
5 with respect to procedures and/or agreements applies
6 only to full-time parties and that other parties to the
7 hearing would not be subject to the same procedural
8 conditions nor to the agreement process.

9 THE CHAIRMAN: Well, I think that is the
10 only practical way the Board could view it because,
11 firstly, the other parties to the hearing are spread
12 all over the province, they are not in front of us on a
13 regular basis; secondly, they would be unable to get
14 together with the full-time parties to even contemplate
15 such an agreement; and, thirdly, perhaps more
16 importantly, it is the full-time parties that are
17 occupying 90 per cent of the time.

18 MS. SWENARCHUK: Yes. Mr. Campbell is
19 just saying that even the question of how many parties
20 constitute full-time parties is perhaps in question and
21 that perhaps it would be most efficient to actually
22 produce a list of those parties that would be
23 considered to be part of this process or bound by it.

24 THE CHAIRMAN: Well, I think if we were
25 to come out with a definitive procedure that would be

1 applicable, we would have to review that list and
2 perhaps we would even have to have our hearing liaison
3 officer contact each of these, for instance, parties
4 receiving full-time correspondence to see if some of
5 those parties are not included or are excluded. We
6 would have to arrive at some definition of who would be
7 affected by any procedural order in this regard.

8 MS. SWENARCHUK: Exactly. Now, with
9 respect to Mr. Campbell's proposals, I am the one party
10 here fortunate enough to be able to obtain instructions
11 and we are able to inform you that we are in general
12 agreement with the proposals of Mr. Campbell. I just
13 would like to offer some comments about paragraph (a)
14 which has to do with the voluntary limit of one and a
15 half days per panel for direct evidence.

16 Now, being the party that suggested one
17 to two hours several -- almost two years ago, we
18 obviously cannot disagree with such a suggestion. We
19 would, however, wish to recall for all of us that what
20 exactly happens in the course of a given witness'
21 testimony can vary tremendously; there can be
22 procedural disputes, there can be additional
23 interventions from the Board for clarification of
24 various matters, and that in calculating the day a
25 half, that those matters need to be taken into account

1 so that each witness gets a day and a half of time as
2 he or she and her party have planned the testimony in
3 advance. And perhaps the way to be sure of that would
4 be to add to that paragraph that the leave of the Board
5 indicated in the paragraph will be liberally granted.

6 And I will deal briefly as well with the
7 proposal with regard to lead counsel on specific
8 issues, and I can indicate that that is a proposal with
9 which I, as counsel, and my clients have serious
10 concerns. In our view considerable differences of
11 opinion exist between the parties in opposition with
12 regard to many issues on which we as well disagree with
13 the proponent but would have differing proposals to
14 present to you with regard to how to resolve those
15 issues.

16 The Board may be aware and should be
17 aware that, in fact, consultation does occur now
18 amongst counsel with regard to issues to be covered in
19 cross-examination and has occurred to some extent
20 amongst the various parties with regard to issues to be
21 covered in the cases to be presented to you, and
22 certainly none of us have any interest in duplicating,
23 either in our cases or in our cross-examinations, the
24 presentation of issues, and if it has appeared to the
25 Board that some duplication has occurred - and I am not

1 aware to what extent the Board considers that to be the
2 case - but if that is an issue in the Board's mind, it
3 in my view is a reflection of the differing opinions
4 and approaches that the various parties have on some of
5 these issues in dispute.

6 In any event, it would be our position
7 that lead counsel on a particular issue in a more
8 formal sense than now exists through the discussions
9 amongst the parties would not be appropriate.

10 Now, I would like to turn to our
11 additional proposal for limitation of the length of the
12 hearings. As I have indicated, we in general agree
13 that the proposals of Mr. Campbell should be attempted
14 and that that may result in shortening of the hearing
15 to some extent. I think, though, we must all be
16 realists and recognize that the degree to which the
17 hearing may be shortened through these procedures is
18 entirely unknown; they may result in considerable
19 shortening, or very little, or no shortening. And to
20 be frank, in my view, the differences are so
21 substantial amongst the parties --

22 THE CHAIRMAN: Sorry, the differences
23 are...?

24 MS. SWENARCHUK: So substantial that
25 although the terms and conditions exercise will

1 certainly be useful in elucidating clearly where the
2 differences exist, I am doubtful that the process will
3 lead to such substantial agreement that hearing time
4 will be very much shortened by it.

5 Now, I understand the Board's concern as
6 it was expressed earlier that you need to have
7 confidence that the proposals before you will work,
8 that there is a real commitment to shortening the
9 length of the hearing. And our view is that we can
10 propose to you something that is objective and that
11 will clearly shorten the hearing; and, that is, an
12 increase in hearing days which, in our view, can only
13 be implemented realistically speaking by returning the
14 hearing to Toronto or moving the hearing to Toronto at
15 the earliest opportunity. I recognize that there is a
16 Board order on this issue, that the Board has
17 considered the issue in the past --

18 THE CHAIRMAN: There is no order of the
19 Board that is cast in stone.

20 MS. SWENARCHUK: Thank you, Mr. Chairman.

21 THE CHAIRMAN: And we are prepared in the
22 interests and the public interest to review any past
23 decision in terms of both procedure, location of the
24 hearing, length of hearing days, frequency of hearing
25 days, et cetera that will, in our view, have a

1 meaningful effect on the outcome in terms of the length
2 of this hearing. So that you can proceed in that line
3 and don't feel that, just because the Board has made a
4 previous order, it is cast in stone and cannot be
5 changed.

6 MS. SWENARCHUK: As you will recall, I
7 have stood at this microphone and made the same
8 proposal in the past. The proposal has never been from
9 my clients to hold the entire hearing in Toronto. We
10 have been in agreement with those who said that this is
11 a northern industry primarily, although not entirely,
12 and that it was appropriate that the people of northern
13 Ontario have an opportunity to see and participate in
14 this process. In our view, 17 months in Thunder Bay
15 has satisfied that element of the public interest quite
16 appropriately. It has however had, as we all know,
17 extraordinary costs both economic and I think, in some
18 cases, human.

19 In our view, the three long hearing days
20 a week are helpful and are preferable to the previous
21 arrangement, but we all have travel time, or many of
22 us -- excuse me, many of us have travel time in
23 addition to that and, in our view, it would not be
24 appropriate to sit four days a week when travel time
25 for most participants would still be involved. And

1 that is why, in our view, four days a week, which is
2 the schedule that the Environmental Assessment Board
3 frequently uses on hearings, is only realistic in the
4 Toronto area.

5 That would mean then possibly increasing
6 hearing time from 12 days a month now to 16 days a
7 month, which is a third more hearing time and would
8 presumably reduce the length of the remainder of the
9 hearing by a third.

10 I think our estimate this afternoon was
11 that the hearing would conclude in the fall of '92, so
12 I am suggesting something that would hopefully reduce
13 that by a year.

14 This is an objective kind of suggestion,
15 it is not dependent on the course of negotiations,
16 agreements, definition of issues, compliance with
17 scoping orders; it is rather, as I say, an objective
18 type of strategy. It also has, in our view, the
19 advantage with regard to fairness that it could be and,
20 in our proposal -- in our submission, should be
21 directed both to parties in opposition and to parties
22 in support.

23 We would then, therefore, be suggesting
24 that it commence with the presentation of the
25 industry's case.

1 Now, I think everyone here is very
2 concerned with the cost of this hearing from many
3 perspectives, the expenditure of public funds, the
4 impressions of environmental assessment process that
5 accumulate through the cost of a hearing of this
6 extent. It is our view, given the number of the
7 participants here who travel back and forth to Toronto
8 who have establishments in Toronto, that the costs
9 surely would be considerably reduced by moving it
10 there.

11 Now, we are one of those parties that has
12 received intervenor funding and a portion of that is
13 allocated to covering our costs here. I am able to
14 indicate my client's position that we would be open to
15 discussions with regard to reallocation of those funds
16 for parties whose costs might increase as a result of
17 this process.

18 Now, we are also aware that some parties,
19 including full-time parties as well as certainly
20 non-full-time parties, will be presenting parts of
21 their case with what I am calling lay witnesses,
22 witnesses who perhaps are expert based on their
23 experience on a certain issue. I think, for example,
24 of Indian people testifying about the conditions in
25 their parts of Ontario. In my view, those are not

1 experts in the normal sense of which that term is used;
2 that is to say, they are not professional planners,
3 professional foresters. In my view, our proposal
4 should be subject to the right of such lay people to
5 maintain the part of their testimony in their part of
6 Ontario if they so desire.

17 MS. SWENARCHUK: My proposal would have
18 their experts testifying in Toronto and, shall we say,
19 lay witnesses, non-professionals wherever the given
20 party chooses.

I haven't had an opportunity to discuss this proposal with these parties, but in terms of cost differentials, I think that that would be perhaps a fair division. By no means would we want to compel lay people from other parts of Ontario necessarily to

1 travel to Toronto.

2 THE CHAIRMAN: And that wouldn't change,
3 in your view, the Board finishing with its commitment
4 to the satellite hearings in all of these other
5 locations to hear the general public at large?

6 MS. SWENARCHUK: We have always been in
7 agreement with the holding of those satellite hearings.

8 THE CHAIRMAN: Okay.

9 MS. SWENARCHUK: And, in our view, the
10 fact that those hearings would be held, following upon
11 the number of months that we have been in Thunder Bay,
12 is another reason why it's not unreasonable at this
13 time to consider moving the hearing to Toronto.

14 MR. MARTEL: Can I ask you one question
15 before you -- are you suggesting that we sit four days
16 a week, seven and a half hours to eight hours a day in
17 Toronto?

18 MS. SWENARCHUK: I think the Board often
19 sits 9:30 to 5:00 essentially; is that not right?

20 THE CHAIRMAN: Well, depends. We haven't
21 had that many hearings in Toronto quite frankly. Most
22 of the Board's hearings, as you are aware, both the
23 Assessment Board and the joint Board are held in the
24 locale where the undertaking is situate.

25 When you're so-called captive in location

1 other than where the members reside, et cetera and the
2 witnesses reside, it's often a better use of time to
3 sit more lengthy hours. We felt compelled to probably
4 sit the longest number of hours I think most Boards
5 have sat in terms of a tribunal such as a Board like
6 this in Ontario, but we are all up here and we have to
7 utilize, to the greatest extent possible, the time that
8 we are here.

9 Now, if we move the hearing to Toronto, I
10 am not saying that we couldn't sit from 8:30 to 5:00,
11 but that might be pushing it, four days a week.

12 MS. SWENARCHUK: I would think though
13 that nine o'clock to five o'clock is not unreasonable.

14 THE CHAIRMAN: Oh, it's quite possible.

15 MR. MARTEL: That's six and a half hours.
16 You are not gaining anything then, you are sitting 22
17 and a half hours here now.

18 THE CHAIRMAN: You see, when you take a
19 look at the time we are sitting, when we move from the
20 four-day week up here sitting a half day on Monday and
21 a half day on Thursday, to coming up Monday night and
22 starting at 8:30 and finishing at five or so on
23 Thursday, we calculated out, quite frankly, that we on
24 a good week could pick up two extra hours over what we
25 had previously been sitting on the four-day basis.

1 And when you add up the hours that we are
2 sitting, given the fact that there is various
3 interruptions for procedural matters and other things,
4 but if you add up -- but there will be in Toronto
5 anyways, if you add up the hours, I think we totalled
6 the hours to come to...?

7 MR. MARTEL: 22 and a half hours.

8 THE CHAIRMAN: 22 and a half hours. But
9 Mrs. Koven indicates that 9:00 to 5:00 on a four-day
10 week works out to 32 hours.

11 MS. SWENARCHUK: In that case it's 28
12 hours. I would also suggest that an hour lunch, you
13 know, is adequate as well, rather than an hour and a
14 half.

15 THE CHAIRMAN: Well, okay.

16 MR. MARTEL: The only reason I raise the
17 matter is that if you are going to go to Toronto and if
18 you are going to reduce the sitting time and you end up
19 with almost the same number of hours, you are not going
20 to eliminate the one year that we talk about trying to
21 eliminate. That is the only reason I make that point.

22 THE CHAIRMAN: We have to make a
23 realistic appraisal in the number of sitting hours we
24 could actually get in by entertaining such a proposal
25 in terms of the time element. Now, there are other

1 elements that you have referred to; savings in cost,
2 consideration of the fact that 17 months have already
3 been spent in northern Ontario, and an additional
4 period of time will be spent in northern Ontario in
5 terms of the satellite hearings, as well as coming back
6 to hear specific parties in a specific location out of
7 necessity.

8 But what you are dealing with and what we
9 are most interested in as well for the purpose of this
10 session is learning what kind of time we will save
11 overall in terms of finishing this hearing, so we would
12 have to work that out and try and come to some
13 realistic...

14 MS. SWENARCHUK: Well, at a minimum you
15 would gain six hours a week which is almost a third of
16 what we are currently sitting.

17 THE CHAIRMAN: Well, that may well work
18 out to be that.

19 Okay. Thank you, Ms. Swenarchuk.

20 THE CHAIRMAN: Mr. Cassidy, do you have
21 anything to say at this time?

22 MR. CASSIDY: Only that I am one of those
23 counsel that will require some time to consult with my
24 colleagues and my client. We anticipate being able to
25 do that in respect of Mr. Campbell's proposal, being to

1 address the Board next Tuesday; however, with respect
2 to Ms. Swenarchuk's proposal, I am virtually certain we
3 will not be in a position to address that matter.

4 I can advise the Board that that matter
5 has always been under consideration by our client and
6 remains under consideration, but I know that for a
7 fact, unless I pick up the phone tonight and find out
8 otherwise, which I doubt will be the case, that that
9 will not be able to be considered by my client by next
10 Tuesday.

11 However, if the Board wishes to discuss
12 that at a later date, I will be able to advise the
13 Board when we would be prepared to address that issue.

14 THE CHAIRMAN: Well, okay. Let's leave
15 it on this basis, that we think that all parties in
16 consulting your clients with respect to Mr. Campbell's
17 proposals should also, to the extent that they can,
18 deal with the question of a possible change in venue as
19 well, so at least we have all of the other parties,
20 with the exception perhaps, Mr. Campbell, of your
21 client's formal position.

22 I understand part of the problem with
23 your client is the fact that the associations have to
24 meet by way of Board of Directors meetings or something
25 like that?

1 MR. CASSIDY: That is correct. With
2 respect to Mr. Campbell's proposal, that can be done
3 without going that step, at least I believe it can be
4 done and, therefore, I am in a position to say we can
5 deal with that next Tuesday. The other matter is
6 something that is not as simple and we require further
7 time and, as other parties have those problems, we have
8 the matter of dealing with a wide variety of people on
9 that issue which will not be able to be done until
10 after the 17th or 18th.

11 THE CHAIRMAN: Okay. Well, to the extent
12 that the other parties can address that issue as well,
13 I think we would like to have your views on record on
14 the 18th, if possible, and the Ministry of Natural
15 Resources should be able to put their position on
16 record at that time as well, at least with the possible
17 change of venue.

18 MS. MURPHY: Yes, we will.

19 MR. CASSIDY: Sorry, that is the 17th
20 that we are talking about, Mr. Chairman? You just
21 indicated the 18th.

22 MR. MARTEL: Yes, the 17th.

23 THE CHAIRMAN: Oh, sorry, the 17th.

24 MR. CASSIDY: So am I clear that I will
25 not be required to respond to that matter on the 17th.

1 If I am I'll be delighted to, but it is --

2 THE CHAIRMAN: Well, I would attempt to
3 get instructions and then advise us on that date
4 whether you have been successful and, if not, then
5 perhaps we may have to give you a bit of extra time to
6 get those instructions.

7 MR. CASSIDY: Fine. Thank you, Mr.
8 Chairman.

9 THE CHAIRMAN: Mr. Hanna?

10 MR. HANNA: Mr. Chairman, Ms. Swenarchuk
11 advised me of the proposal she was going to bring
12 before the Board and asked me to review with my client,
13 if possible, her particular proposal.

14 THE CHAIRMAN: Well, you want to present
15 in Toronto in any event; do you not?

16 MR. HANNA: That is what I was going to
17 say, that our case is -- we are interested in
18 presenting our case there but, more so, to the more
19 extensive nature of the proposal in terms of applying
20 not just to our own particular case but the location of
21 the hearing in general, and I just simply say that I
22 have spoken to the Ontario Federation of Anglers &
23 Hunters and they would endorse the proposal that Ms.
24 Swenarchuk has brought forward.

25 The other thing I have spoken to the

1 Federation about and that is this matter of the
2 negotiating proposal that Mr. Campbell has come forward
3 with. As you know, I have spoken to the Board before
4 that the Federation is fully supportive of the Board's
5 initiatives in expediting the hearings and we will do
6 everything in our power to assist the Board in that
7 respect and that the proposed negotiating process that
8 Mr. Campbell is bringing forward, in our view, does
9 have potential to move forward and we will do
10 everything in our power to make that work.

11 THE CHAIRMAN: Okay.

12 Mr. Edwards?

13 MR. EDWARDS: Mr. Chairman, obviously I
14 will have to get specific instructions on that latter
15 proposal of Ms. Swenarchuk. With respect to Mr.
16 Campbell's proposals, I think all counsel at the
17 meeting were somewhat encouraged by the response that
18 was given to them.

19 I raised a particular problem that I have
20 respecting some dates and the dates, we agreed, would
21 be the dates as they are, but I have a specific problem
22 with January 30, since I am going to be out of the
23 country from January 13th for three weeks, and I raised
24 it with other counsel, and I think the consensus was
25 that if one party was perhaps given a bit of indulgence

1 to file those a bit late, it may not create too much of
2 a problem.

3 Obviously counsel for the MNR is
4 concerned that everybody doesn't get this type of
5 treatment, but I think I would need perhaps into the
6 third week of February before I was in a position to
7 file my draft terms and conditions.

8 I think given the time frame that we
9 looked at today, Mr. Chairman, it would have been
10 likely, under the old order, that the draft terms and
11 conditions would have been filed later than January
12 30th anyway because the Ministry's case would not have
13 been closed, and this still I think gives the Ministry
14 benefit of receiving most, if not all of them before
15 the close of their case and should allow Mr. Cassidy
16 sufficient time to address the issues.

17 But I would like to get instructions from
18 my client on the issue of when it's realistic for us to
19 present our draft terms and conditions, which really
20 couldn't be before the third week of February. So I
21 thought I should draw that to your attention before we
22 even run off to consult our clients.

23 THE CHAIRMAN: Yes?

24 MS. BAIR-MUIRHEAD: Mr. Chairman, at this
25 point of course I have no instructions from our client

1 and I had indicated to other counsel I will be making
2 best efforts to get those instructions by next Tuesday.
3 My only comment at this time, Mr. Chairman, is that my
4 client may have some difficulty with Ms. Swenarchuk's
5 proposal that the evidence -- our own evidence be split
6 between lay and expert, and that is the time at
7 which --

8 THE CHAIRMAN: No, the Board understood
9 that or guessed that that might be the case and that is
10 why I wanted to get clarification of what she meant
11 specifically with respect to a client such as your
12 client.

13 Okay. The Ministry?

14 MS. MURPHY: No, I don't have any
15 submissions to make today.

16 THE CHAIRMAN: At this time. Okay.

17 MS. MURPHY: As I told my friends, I am
18 going to take instructions on what we have heard. I am
19 concerned about Mr. Hunter who wasn't at our meeting
20 today, and I hope we can ensure that he receives this
21 as soon as possible.

22 THE CHAIRMAN: Well, I take it -- Mr.
23 Campbell, would you undertake to make sure that your
24 proposal is put to him; and, Ms. Swenarchuk, yours as
25 well so that he'll be able to either respond directly

1 or through somebody from his office or in some fashion.

2 MR. CAMPBELL: I have spoken to Mr.
3 Hunter today, he was faxed a copy of the proposals in a
4 slightly earlier version but there is no change in
5 substance to them, and I will advise him of the next
6 Tuesday date and he can then take whatever steps he
7 thinks is appropriate.

8 MS. SWENARCHUK: Mr. Chairman, I would
9 just like to say with respect to parties such as Treaty
10 No. 3 that this was a proposal that we thought through
11 today, it's certainly not our wish to prejudice the
12 presentation of their case in any way and they may have
13 other proposals that would be more suitable to them
14 than ourselves.

15 THE CHAIRMAN: Very well.

16 Okay. Ladies and gentlemen, if there is
17 nobody else that wants to speak to these matters, just
18 before the Board rises for this part, we want to take a
19 short break before we come down for the scoping
20 session, and we will follow that immediately, we just
21 want to put on the record, over and above what we have
22 discussed today, part of the concerns of the Board
23 relate to the estimated schedule for the completion of
24 the case based on the fact that no additional
25 procedures, other than the ones that are now in effect,

1 are adopted.

2 And, as you are probably aware, the
3 Board, at least a Board member of the Board, reviewed
4 with counsel today the estimated length of time that we
5 would be occupied in the various aspects of this case
6 and that, unfortunately, is not out there for the
7 benefit of those parties who are not in full-time
8 attendance and the Board wishes to place it on the
9 record.

10 We believe it is fair to say, after
11 consulting with counsel for the various parties, that
12 Panel 15's evidence, including the remainder of
13 cross-examination and re-examination, will likely take
14 us to on or about November 14th, 1989. Panel 16's
15 evidence, including both the direct and the
16 cross-examinations, will not be complete by December
17 4th, 1989. We will be in the midst of
18 cross-examination at that time.

19 We have set aside, commencing with
20 December 4th, 1989, a period of time for the
21 examination of Dean Baskerville who has indicated to
22 the Board's counsel, Mr. Turkstra, that he is available
23 for seven days in December commencing with December
24 4th, and we expect to rise no later than December 15th.

25 Now, we do not believe that the parties

1 will be through with their cross-examination of Dean
2 Baskerville in December and it is likely that he will
3 have to return, if he can - and we haven't got that
4 confirmed at this stage - in early January to complete
5 his examination.

6 We would then return to the
7 cross-examination of Panel 16, possibly by the third
8 week of January, 1990 and we would complete that panel
9 at that time.

10 We would then go on to Panel 17 of the
11 proponent's case and we estimate that that will be
12 completed in its entirety by February 15th. February
13 15th, therefore, 1990 would mark the completion of the
14 Ministry's case.

15 Following that, the parties in support
16 would present their evidence and commencing with the
17 industry's case around mid-February, the estimate was
18 approximately four months. In addition, there is a
19 party representing the single industry towns who wishes
20 to be heard in Red Lake and we estimate that when their
21 evidence - which I don't think will be very lengthy -
22 is completed, the completion of that part of the case
23 relating to the parties in support of the Ministry's
24 application will be finished by July 1st of 1990.

25 The Board would then rise for a summer

1 recess and the parties in opposition, commencing with
2 Forests for Tomorrow, would likely commence their case
3 in August of 1990, and the estimate was between four
4 and five months, hopefully finishing in December of
5 1990 prior to rising for the December break.

6 NAN would then -- and in terms of the
7 order, the Board is not necessarily outlining the final
8 order of the parties in opposition, other than
9 specifying that Forests for Tomorrow will likely go
10 first. We haven't yet set the order of the other
11 parties and that will still have to be set, but at
12 least naming the other parties for the purposes of this
13 estimate of time in a particular order, Nishnawbe-Aski
14 Nation and Windigo Tribal Council, the estimate is
15 approximately - although Mr. Hunter was not present -
16 approximately two months and we imagined that that will
17 be finished by the end of February of 1991.

18 Treaty No. 3, approximately one and a
19 half months, which would bring us to probably the end
20 of April, bearing in mind that there may be a brief
21 recess for the school term break in March, and then
22 NOTOA might follow with up to three months.

23 Was that correct, Mr. Edwards? I may
24 have that wrong.

25 MR. EDWARDS: No, that is at least double

1 I think.

2 THE CHAIRMAN: Oh, okay. One and a half
3 months?

4 MR. EDWARDS: I would say one to one and
5 a half, Mr. Chairman.

6 THE CHAIRMAN: Very well. So that would
7 bring us up to June of 1991. The Ontario Federation of
8 Anglers & Hunters, approximately three months. Bearing
9 in mind a summer recess again, would take us to
10 October, of 1991. The Metis and Aboriginal
11 Associations approximately three weeks, might take us
12 to close to the end of November, 1991, and then there
13 are a couple of other parties: Northwatch, Beardmore,
14 and we have lumped them together for perhaps up to a
15 month, and that might take us well into January of
16 1992.

17 We then have the remainder of the
18 satellite hearings, and bearing in mind that some of
19 these parties will have addressed their evidence in
20 certain locations, Toronto being one - and this is on
21 the assumption that we have not made a decision to
22 change the venue of the location beyond what we had
23 originally established - the remainder of the satellite
24 hearings where the lay public will address the Board,
25 because of travel requirements and because of the fact

1 that the Board would spend approximately two days in
2 each location - and that is if we don't have a
3 particular party in that location that wishes to
4 address the Board at length - it would take
5 approximately two months, which would bring us up to
6 the end of March, 1992.

7 We then have reply evidence by the
8 Ministry and that we don't have an exact estimate on,
9 but that may take a while, and then we may break for
10 written argument if the Board specifies written
11 argument, and then we are probably getting very close
12 to the summer break of 1992.

13 And we would probably complete this case
14 some time in the summer of 1992, and I would suggest to
15 you that a decision would probably take us to the end
16 of that year or the very beginning of 1993.

17 That will mark approximately five years
18 since the commencement of the preliminary meetings in
19 this hearing.

20 MR. CAMPBELL: And for the sake of
21 completeness, Mr. Chairman, I should just mention that
22 does not include the possibility that MOE would call a
23 case, but I reserve my rights in that regard.

24 THE CHAIRMAN: That's right. I left you
25 out completely, Mr. Campbell, because you indicated

1 that you may not want to present any evidence, although
2 you are reserving of course your right to do so should
3 circumstances change.

4 So faced with this kind of scenario, it
5 is I think self-evident to everybody why the Board is
6 concerned, why the Board feels that it must, in terms
7 of the Board's obligation to maintain public confidence
8 in the process, do something about it.

9 And there is another matter that the
10 Board has considered; and, that is, as you are aware,
11 that the Ministry is conducting the present management
12 activities under an exemption order and that exemption
13 order, as the Board understands it, expires upon the
14 delivery of the Board's decision. And, to the extent
15 that the Board wishes to change any of those practices
16 by virtue of its decision, I think again it is in the
17 public interest that the Ministry's proceeding under
18 the authority of the exemption order not last forever.

19 The third thing is the Board is under a
20 public duty to use the resources of the Environmental
21 Assessment Board wisely. Now, this is not the only
22 case that is ongoing before the Board and we are
23 utilizing, as you are probably aware, three members of
24 that Board for this hearing, including of course the
25 Chair of that Board. There are other considerations

1 and other matters that must be given some attention as
2 well and we feel that a five-year hearing into one
3 matter is perhaps too long.

4 So the Board wanted, before it rises at
5 this point, to put clearly on the record the reasons
6 behind its concern. I am sure all of you are aware of
7 it up to this point, but the proposals that Mr.
8 Campbell put forward and Ms. Swenarchuk put forward, as
9 well as ultimately what the Board will put forward, all
10 must be directed towards expediting this process
11 without, as I mentioned at the outset, jeopardizing in
12 any way the fairness of this process.

13 Okay, ladies and gentlemen, I think we
14 will take a break for a half hour and just return
15 briefly. We don't think the scoping session will take
16 that long with respect to Panel 16 and we will finish
17 that off this evening.

18 Thank you.

19 ---Recess taken at 7:15 p.m.

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GENEST MURRAY

MEMORANDUM

DATE: October 10, 1989

TO: Counsel - Timber Management Hearing

FROM: Bruce B. Campbell
Counsel
Minister of the Environment

RE: Proposal Responding To Board's Discussions
Regarding Length of Hearing

- a) a voluntary limit of one and one-half days per panel for direct evidence, with leave of the Board being required if more time is felt to be required.
- b) any party not filing a scoping statement in a timely fashion would require leave of the Board before being permitted to cross-examine on that panel. Leave considerations would depend on the party specifically identifying relevant matters which it intends to raise in cross-examination.
- c) The scoping sessions should be scheduled three weeks in advance of the expected commencement of the panel's evidence, and any party not filing material should be notified by the Board that if they still wish to cross-examine they must, within one week of the date of the scoping session, make representations to the Board in support of leave. Failure to make representations shall be understood by the Board as waiver of the opportunity to cross-examine the panel.
- d) On or before January 30, 1990, each party shall file proposed terms and conditions setting out the specific order which that party wishes the Board to make at the conclusion of the hearing.
- e) The parties shall make available during the period of January 30, 1990 to March 9, 1990, named persons for the purpose of negotiating agreements with respect to proposed terms and conditions. It shall be understood that any agreements so reached shall be subject to management or client approval, with the results of management or client consideration being finalized and communicated by April 13, 1990.

- f) The Board shall set aside hearing time in the week of April 30, 1990 for the purpose of being advised of the outcome of any discussions relating to terms and conditions, and on appropriate procedures for dealing with such agreements in the hearing.
- g) These procedures shall apply to those parties who regularly appear at the hearing, as determined by the Board.

1 ---On resuming at 7:50 p.m.

2 THE CHAIRMAN: ... Thank you, ladies and
3 gentlemen. Please be seated.

4 Very well. The Board has reviewed Panel
5 16's evidence and the statements of issues filed by all
6 of the parties who have filed them to date and we have
7 some preliminary comments before we canvass the parties
8 as to their concerns.

9 We might add, as I think I alluded to
10 earlier, there is virtually no paragraph of the
11 proponent's statement of issues that has been
12 overlooked by any of the other parties in terms of what
13 they would like to hear presented by way of oral
14 evidence.

15 Now, having said that, the Board has
16 reviewed the material and wants to put forward some of
17 its views on this evidence.

18 With respect to Document 1, the Cary
19 document and the Tom Tworzyanski document, this one
20 contains, as you are probably aware, 346 pages or so of
21 references. Let us say it's a given right off the bat
22 that we did not expect 364 pages worth of references to
23 be addressed orally, it's not necessary, and the
24 various parties concerned with some of those references
25 should be kept to an absolute minimum and should only

1 be addressed, in our view, insofar as their specific
2 interest in a particular issue is involved.

3 Now, we would think from our vantage
4 point that three of the areas that should be given some
5 prominence in connection with Document 1 are: No. 1,
6 the audit process itself. We would like to hear a
7 step-by-step dissertation on how the audit process is
8 carried out, what it involves.

9 The second area is the area within the
10 statement dealing with area inspections, what occurs in
11 terms of an area inspection, and related to that is the
12 silvicultural information system and it's tie-in with
13 area inspections.

14 Another question that the Board would
15 like to see addressed during this panel is: Does the
16 Ministry have the resources to do what must be done in
17 the field? There is evidence put forward about what
18 should be done in the field, there is the more
19 practical consideration, as far as the Board is
20 concerned, as to whether or not you can in fact do what
21 you would like to do. Do you have the necessary
22 resources to do so, or is there any reasonable
23 expectation that you will have those resources?

24 Moving on to Document 2, Mr. Straight's
25 document. The Board has heard areas of this document

1 before. Certainly we have heard a lot of evidence in
2 terms of the socio-economic aspects covered in this
3 document, but one area that we are interested in is the
4 effectiveness monitoring which results from the ESSA
5 Document and, again: Can the Ministry carry it out
6 and, if so, how are they going about implementing that
7 document?

8 We heard some evidence that the ESSA
9 compliance monitoring or effectiveness monitoring was
10 going to be implemented or carried out partly in 1989.
11 Now, we don't know whether that was predicated on the
12 Board rendering its decision in 1989, we assume that
13 wasn't the case. So how are you going about it, what
14 stage of implementation are you up to, and where is the
15 progress and what kind of progress is there going to be
16 in the future in terms of its implementation, if that
17 is what you are actually advocating?

18 A second area in Document 2 is: How will
19 these two committees you make reference to, the
20 government, technical and steering committee and this
21 committee of public stakeholders function in the sense
22 that: How will you go about establishing them, who
23 will comprise these committees?

24 And, secondly, suppose they in fact exist
25 and suppose there is a report made annually to these

1 committees, what then, what powers are these committees
2 going to have, and what will they do with the
3 information being presented to them? Suppose they
4 don't agree with the information being presented to
5 them, or they don't agree with the monitoring
6 provisions and the results of the monitoring provisions
7 that are reported to them, what happens then?

8 Thirdly, Mr. Straight makes a statement,
9 I think several times, but particularly on page 430
10 that most of the wildlife species will benefit from the
11 way in which timber management will be carried out in
12 Ontario.

13 The Board would like to know how this
14 accords with what Dr. Euler and Mr. McNicol have said
15 in their evidence. We're specifically referencing the
16 word 'benefit' and contrasting that with the idea that
17 wildlife will not be negatively impacted. There is a
18 difference between benefit in general to wildlife and
19 whether or not these activities will negatively impact
20 upon wildlife and whether or not the activities can be
21 sufficiently mitigated so as not to negatively impact.

22 MR. CAMPBELL: Excuse me, Mr. Chairman,
23 could you give the page reference again, please?

24 MR. MARTEL: 430.

25 THE CHAIRMAN: Sorry, I didn't catch that

1 question, I was --

2 MR. CAMPBELL: I was asking if you could
3 give the page reference again, Mr. Chairman.

4 THE CHAIRMAN: I thought it was page 430.

5 MR. CAMPBELL: Thank you.

6 MR. MARTEL: 430.

7 THE CHAIRMAN: 430. And, again, this
8 last area that we just alluded to should be taken in
9 the context of effectiveness monitoring.

10 Now, with respect to the third document,
11 Dr. Osborn and Mr. Gordon, there is two aspects to that
12 that the Board would probably be interested in; and
13 that is, the annual report on timber management and the
14 state of the forest report.

15 Now, both of those have been alluded to
16 in previous panels to some extent, but we would like
17 that tied in again to the effectiveness monitoring, so
18 that when this monitoring indicates what success there
19 has been in certain areas, how will these fit in in
20 terms of these two reports, and what is the purpose of
21 these two reports in the overall picture, what are they
22 meant to do specifically?

23 Okay. That basically are the areas that
24 the Board feels some concentration of effort should be
25 placed and we realize that many of the other parties

1 have basically indicated that they want to -- one or
2 the other of the parties want to deal with almost every
3 paragraph in the proponent's statement of issues.

4 But we have felt it might be helpful to
5 outline some of our own concerns. You obviously will
6 have your concerns in terms of cross-examination, but
7 we felt that, for the proponent's benefit, we would
8 like to outline the areas that we would like clarified
9 over and above what is in the written witness
10 statement.

11 And if you present your oral direct in
12 that context it may well answer some of the queries and
13 some of the concerns of many of the other parties so,
14 in fact, their cross-examinations may not be as
15 necessary in terms of depth as otherwise might be the
16 case.

17 Okay. We have spoken, now we should give
18 you an opportunity to say something as well.

19 I guess we will start off with you, Mr.
20 Cassidy?

21 MR. CASSIDY: I have nothing further to
22 add other than what is in my statement of issues, Mr.
23 Chairman.

24 THE CHAIRMAN: Ms. Swenarchuk?

25 MS. SWENARCHUK: (nodding negatively)

1 THE CHAIRMAN: Mr. Hanna?

2 MR. HANNA: Mr. Chairman, I have taken
3 the opportunity in the statement of issues to
4 potentially deal with an issue that could take up
5 hearing time that I'm trying to avoid, if possible, and
6 I refer you particularly to page 3 of our statement of
7 issues under matters requiring further oral evidence.

8 And I believe you have spoken to some of
9 our concerns there in the opening statements you have
10 made, but perhaps for our benefit, to minimize the
11 waste of the Board's time and perhaps cross-examination
12 that might not be fruitful, I would like to get your
13 direction.

14 What I am specifically driving at is
15 there are -- dealing first of all with paragraphs 19 to
16 22, that seems to be dealing with effects --
17 effectiveness monitoring as opposed to effects
18 monitoring, and I realize we haven't gotten to the
19 evidence or whatever, but if you allow me to perhaps
20 just extend a little bit into that.

21 The effects monitoring -- the terminology
22 that I am concerned with in the environmental
23 assessment is where one says: I am going to undertake
24 this activity, it's going to have this effect, I am
25 going to mitigate it in this way, and then I come

1 forward before an approval Board like yourselves or
2 before the Ministry, if it doesn't go to a hearing, and
3 they say: That's an acceptable impact, we will proceed
4 on that basis. You then conduct effects monitoring to
5 ensure that the impacts that have been predicted do not
6 exceed those and the mitigation efforts that are going
7 to be taken mitigate appropriately as would be
8 expected.

9 And, in my view, that is certainly
10 perfectly appropriate in certain assumptions, I think
11 the Board is quite concerned about it and quite rightly
12 so. So, as I think we all know, that has not received
13 perhaps so much attention in the past as it might.

14 Effectiveness monitoring seems to go a
15 step beyond that. It's going beyond in the sense that
16 it's actually setting up a research program, it's
17 saying: We want to get a better understanding of how
18 this whole system interacts and whatever.

19 But, in making this comment, I should be
20 very clear right at the beginning that my client
21 obviously is supporting the Ministry in every respect,
22 by that I mean, devotes resources to understanding
23 effects of timber management better, but I am not sure
24 that it's actually within necessarily the purview of
25 this Board or should be within the purview of this

1 Board that it goes a whole step beyond what our
2 understanding of effects monitoring as used classically
3 in the environmental assessment process.

4 ---Discussion off the record

5 THE CHAIRMAN: Okay. I think really this
6 may result in possibly argument at the end of the case
7 as to the Board's jurisdiction precisely, because I
8 think to some extent what you may be getting into is
9 the Section 11 part of the Environmental Assessment
10 Act, and that is where the Minister requires further
11 research or documentation, et cetera, which may - I
12 think I have got my Act in front of me here, just a
13 moment - that is where the Minister feels that there
14 may not be enough evidence upon which to render a
15 decision or upon which to accept the assessment and may
16 feel that the evidence is otherwise unsatisfactory in
17 order to enable a decision to be made.

18 And under that provision the Minister can
19 suspend the approval of the assessment and, in fact,
20 require more research or more studies to be done,
21 presumably after which it would be resubmitted in terms
22 of whether the assessment should or should not be
23 approved.

24 Now, the Board is faced with the decision
25 as to whether the information before it, the

1 assessment, is acceptable at this stage and, of course,
2 if it ruled at the end of hearing all the evidence that
3 it was not in fact acceptable, we wouldn't even get to
4 the second decision, which is whether or not the
5 undertaking should proceed.

6 Whether the Board has the power having
7 accepted the assessment to order further studies to be
8 done, I think is a matter for argument.

9 MR. HANNA: All right. Well, that was
10 the point of my interjection, Mr. Chairman. It's
11 actually Section 11 that had drawn that to my attention
12 and I am concerned because usually -- Section 11, in my
13 knowledge, has not been used that much in the past, but
14 my understanding of it was that it was basically, how
15 should I say, a stop gap between --

16 THE CHAIRMAN: Well, I think something
17 that should be addressed by counsel at the end is the
18 whole area of whether the Board's jurisdiction is
19 identical to that residing in the Minister in terms of
20 all provisions of this Act.

21 I would suggest - and, again, I am not
22 rendering any legal opinion on it at this stage of the
23 game - that that is not necessarily the case, that the
24 Board may be afforded, in some cases, more extensive
25 powers than the Minister or less extensive powers than

1 the Minister and vice versa.

2 And, in that vein, just for the
3 consideration of counsel at the appropriate time - and
4 this is not the appropriate time - when we get to
5 Section 8, Section 8 sets out what the Minister in
6 determining whether or not to accept and amend or
7 accept an environmental assessment shall consider,
8 lists certain things that must be considered.

9 Now, the Board may not necessarily be
10 restricted just to that list, and you have to realize
11 that when you are dealing with statutory interpretation
12 the words have some importance in the sense that, if it
13 appears in one section but does not appear in another
14 section the general statutory interpretation is that it
15 doesn't necessarily extend to the second section. And
16 these are areas that I think counsel at the end of the
17 case would more properly address.

18 So to answer your precise question, I
19 don't know whether the Board has, at this stage of the
20 game without hearing argument, the power as a condition
21 of approval to order necessarily further studies for
22 instance; although, if those further studies are in
23 terms of what the Board considers necessary for
24 effective monitoring, it might well have that power.

25 Again, this is something that I think

1 bears some further consideration. This is an area, I
2 might add, that has not I think to this point in time
3 ever been extensively argued before this Board and, in
4 fact, when you go back to the interpretation of Section
5 11, to my recollection in the last eight and a half
6 years since I have been on the Board, Section 11 has
7 only been used once with respect to the Peel Landfill
8 Site Application.

9 MS. MURPHY: And, as you say, it's just
10 not the time to argue it. I would also bring your
11 attention though to Section 12 of course which says
12 that the Board may make orders and terms and conditions
13 and then asks you to look at Section 14(1)(b)(iii)
14 which tells you which orders the Minister could make.

15 THE CHAIRMAN: Right.

16 MS. MURPHY: And it points out that one
17 of the orders the Minister can make on approval is such
18 research, investigation, studies and monitoring
19 programs related to the undertaking and reports thereof
20 as he considers necessary.

21 I just thought I would bring that one to
22 your attention too.

23 THE CHAIRMAN: Right. But whether that
24 extends precisely to the Board by extension, it may or
25 may not, bearing in mind that 12(2) allows the Board to

1 impose conditions in circumstances which appear to be
2 unfettered.

3 MR. HANNA: Mr. Chairman, I think that
4 direction is useful to me. I think the way it stands
5 is that the issue is still open to contention and,
6 therefore, we should pursue it.

7 I would be quite prepared to limit our
8 cross-examination to a certain extent there because of
9 the uncertainty here. The problem I have is getting
10 into this whole business of costs and what powers the
11 Board has to commit the government to, say, 25 years of
12 costs for a monitoring study and I am quite interested
13 in the subject, but I am reluctant to use the Board's
14 time talking about that if it turns out to be a
15 non-issue, if you understand what I mean.

16 THE CHAIRMAN: Well, it's certainly a
17 difficult area as well because the Board could impose a
18 condition that, frankly, involves a substantial cost.
19 The Legislature, in their ultimate wisdom - since the
20 Ministry, as any other ministry, is beholden to the
21 Legislature in terms of receiving those costs or
22 authority to incur those costs - might be of a totally
23 different view.

24 MR. HANNA: If I might move to another
25 issue then, Mr. Chairman.

1 MR. CAMPBELL: Just before leaving that
2 one, Mr. Chairman, if I could just add something.

3 The effectiveness monitoring program as
4 has been discussed was put forward by the Ministry of
5 Natural Resources, as I understand it, both as a check
6 on the effects side of the equation and to deal with
7 certain uncertainties in the predictive capability with
8 respect to effects and mitigation measures, and it will
9 certainly be the submission of the Ministry of the
10 Environment that this is a where - let me back up
11 slightly - but where uncertainties of the type that
12 have been discussed in this hearing exist, that it is
13 entirely appropriate, given the long-term nature of the
14 carrying out of this undertaking and its size and
15 scope, to ensure that a program is in place to ensure
16 that the desired results are, in fact, being achieved
17 and to either adjust and make more or less rigorous
18 guidelines which are put in place on the basis of
19 certain assumptions which are, themselves, the subject
20 of the effectiveness monitoring program.

21 We see there being absolutely nothing
22 inappropriate in the Board agreeing to confirm the
23 effectiveness monitoring programs and making it part of
24 its decision; and, in fact, the whole question of
25 uncertainties would be entirely more troublesome were

1 this component not in place.

2 I don't want Mr. Hanna leaving today
3 under any illusion that the Ministry accepts his
4 proposition that this is a somewhat novel approach in
5 environmental assessment. I don't believe it is.

6 THE CHAIRMAN: Thank you.

7 MR. HANNA: The second point that I would
8 move to is the paragraphs 27 to 37 and paragraph 39.
9 These paragraphs are dealing with the effects
10 monitoring on timber management and it's my client's
11 position that what this is really monitoring is the
12 effectiveness of the undertaking as opposed to
13 monitoring the effects on the environment.

14 That paragraphs 27 to 39, excepting 38,
15 are going through and saying: This is how we will
16 monitor whether we have got enough wood, whether we
17 have got adequate renewal, or whatever, from the point
18 of view of producing timber as opposed from the point
19 of view of the environment that's affected by the
20 activity.

21 THE CHAIRMAN: Well certainly, you know,
22 we have before us the objective of the undertaking and
23 the monitoring program has to no doubt relate to the
24 purpose of this particular undertaking.

25 Now, we want to know what the effect of

1 the activities involved in this undertaking are
2 vis-a-vis their impact on the environment, and I think
3 the proponent has endeavored throughout their case to
4 show what those impacts are.

5 MS. MURPHY: Might I point out that it
6 has been said before by the Ministry of Natural
7 Resources--

8 THE CHAIRMAN: Sorry?

9 MS. MURPHY: --and I will say it again,
10 it is our view that the trees are part of the
11 environment, Mr. Chairman.

12 MR. HANNA: Well, I don't disagree with
13 that obviously, but I think it's a matter of when a
14 tree is a tree and when a tree is a piece of wood. And
15 I think the way that we are looking anyways at sections
16 27 to 39 is that it is dealing with wood rather than
17 being part of the environment.

18 Again, I am simply putting that out. I
19 thought the purposes of these meetings was to try and
20 resolve those things and if the Board's dealt with
21 that, that's fine. We simply brought that forward to
22 the Board for their attention and consideration. That
23 was our purpose for coming forward at this time.

24 THE CHAIRMAN: Well, I think you have to
25 look at the undertaking of the proponent as it involves

1 the four principal activities that they have
2 identified: harvest, access roads, renewal and
3 maintenance and how those activities affect/effect the
4 environment.

5 MR. HANNA: No question.

6 THE CHAIRMAN: Okay. And the monitoring
7 program that they have put forward in their view
8 addresses those impacts.

9 MR. HANNA: To give you an example, Mr.
10 Chairman, paragraph 30 says that harvest operation is
11 effective if the harvest meets or achieves the
12 utilization standards.

13 Now, I have difficulty in understanding
14 how that pertains to the environment. I certainly
15 understand how it pertains to the undertaking and I
16 understand certainly it pertains very much to the
17 undertaking itself in terms of production of wood, but
18 in terms of monitoring the effects of the undertaking
19 on the environment, I have difficulty in understanding
20 the relevance of that sort of program.

21 ---Discussion off the record

22 THE CHAIRMAN: But my colleague points
23 out that the way they have organized their evidence,
24 Document 2 is attempting to address the effect on some
25 non-timber environmental values. Document 3 is

1 attempting to address timber management effectiveness
2 monitoring and that primarily relates to timber
3 production. So the whole panel taken together
4 addresses some of your concerns on non-timber values.

5 MR. HANNA: Mr. Chairman, I just want to
6 make it clear, I have no concern about non-timber
7 values not being included. My concern was more -- I
8 don't want to take up hearing time going into detail,
9 cross-examination on the timber management monitoring
10 program if in fact that's really part of the
11 undertaking and not part of the monitoring effects of
12 the environment. That was the only reason I brought it
13 forward. It wasn't to suggest that those other
14 concerns are not being dealt with. I was trying to
15 expedite --

16 THE CHAIRMAN: Well, if the other
17 concerns are in fact being dealt with, then what is
18 your concern? Are you suggesting that you may not have
19 to look at Document 3 as far as your client is
20 concerned?

21 MR. HANNA: Well, I --

22 THE CHAIRMAN: And if that's the case,
23 that's fair game, because your client's interest may
24 not be in terms of their interest in Document 3,
25 whereas the industry's concerns may very well be in

1 terms of Document 3.

2 MR. HANNA: My concern is this, Mr.
3
4 Chairman: If the Board in its wisdom at the end of the
5 hearing decides to entrench, if you will, the timber
6 management planning process not just in terms of its
7 environmental effects and dealing with that, but also
8 the whole process by which we do the undertaking; in
9 other words, how you build the highway, not just how
10 you deal with the environmental effects of the highway,
then my client is obviously very concerned.

11 My client has a concern in being involved
12 in ensuring that that is done appropriately. However,
13 I am not convinced that that -- or my client is not
14 convinced that that in fact is within the normal
15 purview of this Board.

16 THE CHAIRMAN: Well, we are not sure
17 necessarily that that is something that would be within
18 the normal purview of what your client would be
19 interested in.

20 MR. HANNA: Well, I can certainly tell
21 you it is, Mr. Chairman, that -- and I can tell you it
22 is right in the very basic objectives of the Federation
23 that they are concerned and if I had before me at the
24 present time -- in fact I probably do, the conservation
25 pledge of the Federation is:

1 "I give my pledge as a Canadian to save
2 and faithfully defend from waste the
3 natural resources of my country, its
4 soils, minerals, air, water, forests and
5 wildlife."

6 So in that respect I say it is very much
7 within the purview, Mr. Chairman. It's simply a matter
8 of interpretation of what is the scope of the hearing.
9 I am trying really to try and -- if it's not within the
10 scope of the hearing, try and avoid the necessity of
11 taking time dealing with it, but if the Board declares
12 it is, then I will certainly deal with it.

13 THE CHAIRMAN: Well, it is our view, Mr.
14 Hanna, that you should probably in your client's
15 interest focus on Documents 1 and 2 and other parties
16 will likely be focusing on Document 3 as well as parts
17 of 1 and 2.

18 MR. HANNA: That's probably a good
19 suggestion, Mr. Chairman. As I said earlier in the
20 session today, I think there is some value in that and
21 I will speak to other counsel in that respect, but the
22 reason I brought this forward is really I don't want to
23 in any way prejudice the rights of my client in terms
24 of their concerns with that.

25 If that could be dealt with through other

1 counsel, I will certainly do that.

2 THE CHAIRMAN: Anything further from any
3 other counsel?

4 Mr. Edwards?

5 MR. EDWARDS: Just with respect to our
6 statement of issues, Mr. Chairman. The portion on page
7 2 respecting our questioning on paragraphs 27 to 40,
8 that's through Document 3, I expect and anticipate I
9 will be extremely brief in that area and I just wanted
10 to advise counsel of that.

11 Our questioning will primarily focus on
12 what is on the first page and since everybody under the
13 sun seems to have...

14 ---Discussion off the record

15 THE CHAIRMAN: Sorry.

16 MR. EDWARDS: Since everybody under the
17 sun seems to have an interest in the changes or the
18 proposed changes to the Crown Timber Act, I probably
19 won't even have to address that in my cross-examination
20 because I am sure other counsel would have already
21 covered it.

22 THE CHAIRMAN: Okay. Do you have any
23 comments?

24 MS. BAIR-MUIRHEAD: No additional
25 comments, no. Thank you.

1 THE CHAIRMAN: Okay. Is there any
2 representations to be made with respect to this scoping
3 session?

4 Ms. Murphy?

5 MS. MURPHY: Mr. Chairman just two things
6 I wanted to mention. First of all, one of the issues
7 you've raised today is about the effectiveness
8 monitoring discussion that's in Panel 2 and what has
9 resulted from or since the end of the ESSA exercise and
10 so forth.

11 Just to advise you, I would imagine you
12 haven't had time to look, but in response to a number
13 of questions that were raised about that very set of
14 issues, what we did was provide last week a current
15 update on the three monitoring programs with respect to
16 moose, fish and tourism guidelines and also an update
17 on the wildlife population monitoring information
18 that's in that panel.

19 THE CHAIRMAN: Did we get that?

20 MS. MURPHY: Yes, it was sent out last
21 Thursday. It is up to date as of last Thursday.

22 THE CHAIRMAN: Well, I apologize, I don't
23 think the Board has seen it.

24 MS. MURPHY: Well, that may well be, Mr.
25 Chairman. I had it delivered to my friends last week.

1 We hope that that goes some distance in answering a
2 number of questions related to that.

3 I do have one another matter I would like
4 to raise, and I mentioned it at the very beginning of
5 this afternoon. As you will recall - and,
6 unfortunately, I don't have the transcript references
7 and I don't know that it is important - but as you will
8 recall, there was some discussion back in Panel 8 about
9 Dr. McNamee and whether it would be necessary to call
10 him in the evidence of Panel 16.

11 In preparation - and I would advise you
12 at this time the matters that we are planning to deal
13 with are very much the ones that the Board has raised
14 today - and in preparation for that, it is our view
15 that we don't have any particular reason of our own to
16 call Dr. McNamee. Also, in the very short time I had
17 to look at the statements of issues, I don't see any
18 particular issue being raised that will be dealt with
19 by Dr. McNamee.

20 And if I could just add one another
21 practical matter. Dr. McNamee has advised - and he is
22 interested in knowing the outcome of this obviously -
23 but he has advised that between now and mid-December he
24 will be -- he is currently in Vietnam, he will then be
25 in Vancouver and Newfoundland, and then starting the

1 15th I believe of January to the 2nd of February he is
2 in Bangkok.

3 I would suggest that if my friends do
4 have anything specific they would like to deal with Dr.
5 McNamee about, and I don't have any specifics that they
6 have raised, it would probably be best to wait until 16
7 is finished and see if there really is anything left of
8 any substance.

9 THE CHAIRMAN: Well, we certainly concur
10 with that because we expect to be finished with 16
11 prior to when you've indicated he will be available in
12 any event.

13 MR. HANNA: Mr. Chairman, I am prepared
14 to agree to that, but I would like to draw your
15 attention to the transcripts and a commitment was made
16 there, simply for the record.

17 I am looking on Volume 69, page 11801 and
18 at that time Mr. Armstrong was cross-examining Panel 8
19 and he was attempting to look at the effects monitoring
20 program and the costs associated with that, the
21 document was brought forward. And perhaps I can just
22 read you two or three sentences out of that, it might
23 just clarify this issue.

24 "MR. STRAIGHT: I am reasonably certain
25 from the title that this is one of the

1 references in Panel 16 subject to
2 comparing the actual, whether this is a
3 draft or a final one, but it appears like
4 it is a final one and there is certainly
5 the reference to this material in Panel
6 16."

7 Which in fact there is.

8 "MR. FREIDIN: I am advised that it is
9 there, and this is a matter which is
10 going to be dealt with in Panel 16 and
11 one of the things we were hoping to do
12 by having Mr. McNamee reappear in Panel
13 16, as you recall after the scoping
14 session in Toronto, was to avoid getting
15 into that monitoring aspect.

16 THE CHAIRMAN: Okay. Well, Mr.
17 Armstrong, we have received assurances
18 from the proponent that it will produced
19 and if produced as part of the witness
20 statement of Panel 16, Dr. McNamee will
21 be a member of that panel and, therefore,
22 it would seem that any questions you
23 might want to put to him regarding this
24 report, the cost issue itself, should
25 probably better await that panel."

1 And it was for that reason that he had
2 expected to see Dr. McNamee, in fact terminated our
3 questions at that point during the cross-examination of
4 that panel.

5 THE CHAIRMAN: Okay. As we recall there
6 was more than just Dr. McNamee from ESSA that was
7 involved in this effectiveness monitoring; was there
8 not? Couldn't somebody else, if necessary, be produced
9 other than Dr. McNamee?

10 MS. MURPHY: Certainly. I don't dispute
11 for one minute that there was a discussion at that
12 stage of calling Dr. McNamee. My question is whether
13 it is necessary to do so.

14 If the questions that people wish to ask
15 are questions about what's actually happening, what's
16 actually the cost and so forth, then certainly there
17 would be people other than Dr. McNamee that could
18 answer that and it is our view that we would be
19 perfectly happy to have people here available to answer
20 questions specific to what is actually happening, he
21 wouldn't be able to do that. If I knew what kinds of
22 things --

23 THE CHAIRMAN: All right. Why don't we
24 do it on this basis: Why don't the parties who would
25 otherwise want to examine Dr. McNamee on some aspect of

1 Panel 16's evidence put their questions in writing with
2 respect to that part of the evidence and we will ask
3 the Ministry to either produce somebody else on the
4 panel who can answer those questions or otherwise have
5 Dr. McNamee respond to an interrogatory in that regard.

6 MR. HANNA: That will be fine, Mr.
7 Chairman.

8 THE CHAIRMAN: And we will not expect Dr.
9 McNamee to be called for this panel. Okay?

10 MR. HANNA: Fine.

11 MS. MURPHY: That's fine.

12 THE CHAIRMAN: Anything else?

13 (no response)

14 Okay, ladies and gentlemen, we will
15 adjourn until 8:30 tomorrow morning.

16 Thank you.

17 ---Whereupon the hearing adjourned at 8:30 p.m., to be
18 reconvened on Wednesday, October 11th, 1989,
19 commencing at 8:30 a.m.

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